

## **REMARKS**

This application was filed with claims 1-93. Claims 40-93 are withdrawn from consideration in response to a Restriction Requirement. Claims 1-39 are rejected. Claims 1, 9, 10, 27, 32, and 34-36 have been amended. Claims 11-12, 33, and 40-93 have been canceled. New claims 94 and 95 have been added. Thus, claims 1-10, 13-32, 34-39, and 94-95 are currently pending.

### **Amendments to the Specification**

The Examiner requested an amendment to the continuation data. Applicant notes the Preliminary Amendment filed on December 11, 2001 which provided the requested information. Applicant also notes the Updated Filing Receipt mailed March 18, 2002, which acknowledges the continuation data. Herein, Applicant has further amended the continuation data to update U.S. Patent numbers.

### **Amendments to the Claims**

Applicant has amended claims 1, 9, 10, 27, 32, and 34-36. Support for the amendments is found in the specification, for example on pages 10 and 16. No new matter has been added by the amendments.

Applicant has canceled claims 11-12, 33, and 40-93. Applicant has added new claims 94 and 95. Support for the new claims is found in the specification, for example on pages 10, 32-37, and figures 3-5. No new matter has been added by the amendments. Thus, claims 1-10, 13-32, 34-39, and 94-95 are currently pending.

#### Claim Rejections – §112, second paragraph

Claims 1-39 were rejected under 35 U.S.C. 112, second paragraph, as allegedly being indefinite. Applicant has amended claims 1 and 27, the independent claims, for clarification, pursuant to the recommendation of the Examiner. Support for the amendment is found in the application, for example on pages 10 and 16. Applicant believes the amendments to the claims make the rejections moot. Applicant respectfully requests that the rejections be reconsidered and withdrawn.

#### Claim Rejections – §103

Claims 1-3, 8, 13, 25-29, and 37 were rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Osawa in view of Skeirik. In order to establish a *prima facie* case of obviousness, there must be some suggestion or motivation to combine the reference teachings with a reasonable expectation of success. Additionally, the references when combined must teach or suggest all of the claim limitations. M.P.E.P. §2143.

There is no suggestion or motivation to combine the references. The Examiner argues that the control means in Skeirik are deemed to be suggested for any manufacturing process, including the Osawa process. However, Skeirik merely discloses computer control of a processing system and does not provide disclosure of the actual process being controlled by the present invention. Thus, the references are not properly combined. Accordingly, Applicant respectfully requests that the rejections be reconsidered and withdrawn.

The Examiner argues that Osawa describes homogenizing seeds when such seeds are ground or squeezed. The Examiner cites the definition of homogenize in the New Riverside University Dictionary. The Examiner argues that Osawa describes pH adjustment and heat treatment of the juice, as well as separation by centrifugation or filtering. The Examiner also notes that Osawa does not disclose automation via computer control of the processing apparatus.

Regarding amended claims 1 and 27, the cited references do not teach or suggest all of the claim limitations. See Example 1 and the following examples disclosed by Osawa. Specifically, in Example 1, seeds are ground in order to obtain defatted oil cake, which is the solid phase of the grinding step. The solid phase is then further processed as it is resuspended in a liquid. It is the resuspended solid which then receives pH adjustment and/or heat treatment, not the liquid phase of the ground seeds. The liquid phase of the grinding, or squeezing, step is the fat (column 3, lines 32-34). In fact, Osawa discloses that the fat which results from the defatting treatment (such as squeezing) can be effectively utilized as sesame oil (col. 3, lines 43-46). In the present application, amended claims 1 and 27 require adjusting the pH of the juice, or liquid phase of the homogenate. Amended claims 1 and 27 also require heating the juice. Clearly the cited references do not teach or suggest all of the claim limitations of claims 1 and 27. Accordingly, Applicant respectfully requests that the rejections be reconsidered and withdrawn.

Rejection of claims 2, 3, 8, 13, 25, and 26 is not proper. Since Osawa and Skeirik are not properly combined and do not disclose all of the claim limitations of

claim 1, that claim is not properly rejected. The above listed claims depend from claim 1 and the rejection of the dependent claims is not proper because the rejection of the independent claim is not proper. Accordingly, Applicant respectfully requests that those rejections be reconsidered and withdrawn.

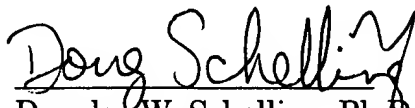
Regarding claims 28, 29, and 37, since Osawa and Skeirik do not disclose all of the claim limitations of claim 27 and those references are not properly combined, the rejection of claim 27 is not proper and claims 28, 29, and 37, which depend from claim 27, are not properly rejected. Accordingly, Applicant respectfully requests that those rejections be reconsidered and withdrawn.

Applicant notes that the Examiner did not initial the patent application publication by Garger on the PTO-1449 received on May 13, 2003. Applicant requests that the Examiner initial it to indicate that it has been considered.

Pursuant to 37 C.F.R. §1.136(a), Applicant petitions the Commissioner to extend the time for responding to the January 14, 2004, Office Action for 1 month from April 14, 2004 to May 14, 2004. Applicant encloses herewith a check in the amount of \$55.00 made payable to the Commissioner of Patents and Trademarks for the extension fee.

The Commissioner is authorized to charge any deficiency or credit any overpayment associated with the filing of this Preliminary Amendment to Deposit Account 23-0035.

Respectfully submitted,

  
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I hereby certify that this Response and Amendment (20 pages) including Certificate of First Class Mailing (1 page); a check in the amount of \$55.00 for a one month extension; and a self addressed return post card are being deposited with the United States Postal Service as first class mail in an envelope addressed to:

Mail Stop Amendment  
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May 11, 2004  
Date